

### **Amendments to the Drawings**

The attached sheet of drawings includes changes to Figure 4. This sheet replaces the original drawing sheet for Figure 4.

Attachment: replacement sheet

## **Remarks and Arguments**

### **RESPONSE TO NOTICE OF NON-COMPLIANT BRIEF**

The previously withdrawn claims are now listed as "cancelled" per the claim amendments above.

Applicants assume that this was the basis for the Notice of Non-Compliant Brief and it is believe the Notice is hereby traversed.

#### **I. Objection to the Drawings**

The Examiner has objected to Fig. 4 of the drawings for failing to recite element 36b per the specification. A proposed amendment to Figure 4 adopting the Examiner's suggested amendment is submitted herewith.

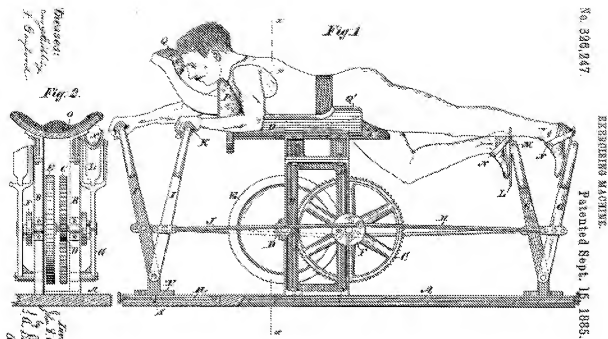
#### **II. Objection to Paragraphs Of the Specification**

The Examiner has objected to paragraphs [0065] and [0086] of the specification. Per the Examiner's suggestion, these paragraphs have been amended.

#### **III. U.S. Patent No. 326,247 Cited/Applied By The Examiner**

##### **A. The Claims are not anticipated by the Root Reference**

The Examiner has cited/applied this reference as anticipating all of the pending claims 10-21, 23 and 36 in this application.



Solely for purposes of clarity the remaining independent claims 10, 20 and 36 have been amended. Even without the amendments, the independent claims are not anticipated by the Root disclosure.

Root's apparatus does not support a user in an *upright* position. To the contrary, the frame and structure of the apparatus are incapable of supporting a user in an upright position because the purpose of the apparatus is to support the torso of the user on a separate bench on which the user's stomach lies. The purpose, structure and function of the Root apparatus is entirely different from the claimed apparatus of this invention.

**B. The Root Reference Explicitly Describes the Momentum Of the Flywheel As Moving the Pedals Over a Single All the Way Forward and All the Way Back Path**

Root's apparatus does not enable the foot pedals to travel along any *selected segment* of an arcuate path.

Nor does Root's apparatus enable the user to select any *reproducible* path of travel between back and forth.

To the contrary, the foot pedals of the Root apparatus travel in a single back and forth path that is explicitly described in the specification as being advantageous provided by the momentum of the flywheel, not by the selection of a segment by the user. And, the *only path* shown between all the way back and all the way forward not into any divisible segment of all the way back and all the way forward. And, there is no mechanism described or shown on the apparatus that allows/enables the user to select a segment of the path of the all the way back and all the way forward path of the pedals.

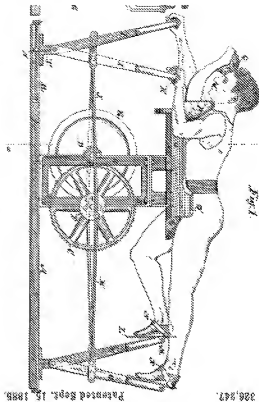
**C. The Path of Travel of Root's Foot Pedals  
Is Not Forwardly and Upwardly or  
Backwardly and Downwardly**

The foot pedals in Root's apparatus do not travel forwardly and upwardly or backwardly and downwardly.

The one and only path of travel of the Root foot pedals is back and forth to the same vertical height. The entire purpose of the Root apparatus is to support the torso of the user in a horizontal orientation, such that the foot pedals travel all the way back and the way forward along a single path, not along or to any vertical position by which the user must support their own weight.

**D. The Root Apparatus is Not Analogous**

The claims in this application call for the handles to move forwardly and backwardly. In the Root apparatus if the user were standing on the foot pedals:



the handles would not move forwardly and backwardly but instead up and down. And, the weight of the user would cause the frame of the apparatus to pivot counterclockwise and fall over to the ground. The linkages as shown in the Root apparatus would also not be able to withstand the stress placed on them by the weight of the user and would fail. And, there is no possibility that the user can select any segment of the up and down path of the foot supports.

#### **E. The Section 102 Rejection Should be Withdrawn**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004). Whole elements of a claim that

are missing in the prior art make a Section 102 rejection clearly improper. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004).

Moreover, in mechanical cases such as this, claim limitations calling for mechanical relationships, must be found literally in the prior art reference being applied in order for a Section 102(b) anticipation to be properly said to exist. In Re Bart, 918 F.2d 187 (Fed. Cir. 1990).

#### **F. The Other References Cited**

None of the other cited references disclose a pedal and an arm that both move forwardly or backwardly together where the user can select an arc segment or where the pedals move both forwardly and upwardly or both backwardly and downwardly.

For the same reasons cited above regarding Ex Parte Swope, any argument that the present invention is anticipated by any of the other cited art fails.

As to obviousness, any such argument must also fail because the all-elements rule of Alza cannot be met by any combination of the references cited by the examiner.

## CONCLUSION

Reconsideration of the present application and early and favorable action is respectfully requested. If the examiner believes that a teleconference would expedite prosecution of the present application, the examiner is invited to call the Applicant's undersigned attorney at the Examiner's earliest convenience.

Any amendments, withdrawal or cancellation of claims made herein is made without prejudice and is not an admission that said withdrawn, canceled or amended subject matter is not patentable. Applicant reserves the right to pursue said withdrawn, canceled or amended subject matter in one or more continuation or divisional applications.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account **02-3038**, under **C016-7080US5**.

Respectfully submitted

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